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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

KIRK RUSSEL MARSH,

Plaintiff,

vs.

THE STATE OF UTAH; JUDGE MICHAEL EDWARDS; DANA EMMONS,

Defendant

Case No.: 1:24-CV-516

JUDGE PATRICIA TOLLIVER GILES
MAGISTRATE JUDGE IVAN D. DAVIS

RUSSEL'S RESPONSE OPPOSING DEFENDANT'S MOTION TO DISMISS

Dated this 12th day of May, 2024.

Kirk Russel Marsh

Kirk Russel Marsh, Pro Se

INTRODUCTION

1. Defendants have failed to address the underlying concerns both in state court (where a *Verified Petition to Modify,* filed by Russel, has been ignored), and in federal Court, where Defendants used legal inaction and maneuvering in attempts to mislead this Court.

2. In their motion to dismiss, the Defendants ignored the plea for habeas relief and accompanying injunction, mentioning judicial entrapment only in the sense that they do not choose to believe it exists. Failure to address the underlying issue of entrapment continues the cycle of abuse and violations of constitutional rights against Russel Marsh.

3. Had Defendants addressed the issues in the proper venue - their own court - then federal court would not be addressing an injunction to vacating the State Court's judgment, and the only complaint addressed here would be for damages.

4. Defendants' claims of no jurisdiction, immunity and no viable claims are addressed below as they pertain to defendants STATE OF UTAH and JUDGE MICHAEL S. EDWARDS.

5. As UTAH and JUDGE EDWARDS have chosen not to accept responsibility for the claims against Ms. EMMONS as a state actor in their *Motion to Dismiss,* Russel will provide support for the claims as a state actor but reserve additional arguments as they pertain to DANA EMMONS.

6. The State of Utah has a constitutional duty to uphold the law and the Constitution, therefore Russel respectfully requests that Defendants' motion be dismissed, and the matter to proceed in federal court.

FACTUAL DISPUTES TO DEFENDANTS MOTION

7. Russel agrees with facts 1, 3, 4, 6 ,7, 9, 10, 11 as set out by the Defendants.

8. Russel objects to fact 2, which reads "At the time of the events at issue, Dana Emmons was the court-appointed reunification counselor upon which the parties agreed."

   a. This is misleading in two ways:

      i. The first being the implication that the parties agreed to reunification counseling. This is not true. The Court ordered reunification upon Lauren's request, in spite of the Court's acknowledgement that the children's anxiety about spending time with Russel stemmed from their mother's anxiety, not from the children's own feelings.

      ii. Additionally, as the parties did initially agree to the appointment of Dana Emmons, Russel did *not* agree (due to the violations of his privacy rights, as well as those of his children) to her appointment after the first meeting with Dana and the children.

   b. The fact is in dispute because the parties *did not* agree with reunification services nor with the continued use of Dana Emmons, and Russel was coerced into using Dana's services, much to his continued abuse.

9. Russel objects to fact 5, which reads:

> "Judge Edwards, having found that Marsh had dissipated ***at least half*** of the marital funds in the course of his illegal activities, awarded all the marital equity to Marsh's wife."

10. The Defendants footnoted this information, sourcing item 99 of the initial complaint, which quotes Edwards' ruling as:

"The Court would normally divide the $120,000 in equity remaining in the property between the parties. However, where the Court has found that respondent dissipated at least $60,000 of marital funds in the course of his illegal activities, the Court finds that it is equitable to award the entire $120,000 in marital equity to the petitioner."

11. Defendants stated *as fact* to the Court that $60,000 is half of $180,000. This misrepresentation of facts appears to be meant to mislead this Court into underestimating the egregious nature of Edwards' divorce judgment.

12. It should be noted that, after the divorce trial in 2019, Russel objected to the ruling concerning awarding of marital assets: on November 4, 2019, Russel submitted an *Objection to Proposed Final Documents* to the Court, stating:

    a. 'Conclusion paragraph 24 evidences a mistake in calculations by the Court. The Court found that Respondent depleted marital assets of $60,000. He also found that the $120,000 remaining equity in the home was a marital asset. That should result in $90,000 for each party ($180,000 in marital assets divided in half). Instead the Court awarded the Respondent the $60,000 he depleted and Petitioner $120,000. Perhaps the Court would be willing to clarify its intent regarding these issues.'[1]

    b. Judge Edwards dismissed the objection, and awarded Lauren (Petitioner) the entirety of the marital assets.

13. These events set a precedent that, due to his criminal actions, Russel would not be given fair and impartial treatment in the Utah Family Court system.

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[1] *Marsh v. Marsh,* Objection to Proposed Final Documents, 11.04. 2019

14. As Judge Edwards gave Lauren all assets, and then ordered Russel support payment obligations far above his ability to earn, the Defendants' misleading statement of fact to this Court is another example of Defendants' continued abuse of Russel and manipulation of the legal system.

15. Russel objects to fact 8, which reads "In or around December 2019, the parties chose Dana Emmons as their reunification counselor. Marsh and his children first met with Emmons on or about December 10, 2019." This should be 2020, not 2019.

COUNTER ARGUMENTS TO THE DEFENDANTS' MEMORANDUM

16. In *Sterling V Constantin*, Mr. Chief Justice Hughes said regarding immunity:

a. "If this extreme position could be deemed to be well taken, it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the State may at any time disclose by the simple process of transferring powers of legislation to the Governor to be exercised by him, beyond control, upon his assertion of necessity. Under our system of government, such a conclusion is obviously untenable. There is no such avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding

directed against the individuals charged with the transgression." [2]

b. The same principle should be true for state actors who exceed their authority in violation of Constitutional rights.

1. Defendants claim: the Court lacks personal jurisdiction over Judge Edwards

17. The Defendants argue the Court lacks personal jurisdiction over Judge Edwards. This can have two facets:

a. First, the Court has no jurisdiction over the defendant Judge Edwards, as suggested by the claim that Virginia's long-arm statute does not reach Judge Edwards.

i. The argument that this Court lacks general jurisdiction over Edwards is simply untrue; the Court has jurisdiction over Judge Edwards, the State of Utah, and Ms. Emmons, as will be further explained.

ii. This case can only be heard in federal court, due to Constitutional and federal statute violations, as well as third party Constitutional violations, thus all defendant parties are subject to the Federal Court jurisdiction.

b. Second, that all the actions taken by Judge Edwards are taken in his official capacity and that no personal claim can be entertained.

i. If Utah claims the Court has no personal jurisdiction over Judge Edwards, then the state of Utah must take liability for his actions, as his actions were part of his job.

ii. However If Judge Edwards exceeded his authority as a State actor and ruled

[2] Sterling v. Constantin. 287 U.S. 378 at 397, 77 L.Ed. 375, 53 S. Ct. 190.Id. at 397-398, 77 L.Ed. 375.

outside his jurisdiction, then personal liability would apply.

1.1 Defendants claim: Virginia's long-arm statute does not reach Judge Edwards.

18. "In cases that may be brought only in a federal court, …federal courts may exercise personal jurisdiction over a defendant regardless of where the defendant is found."[3] This negates the argument that Virginia's long-arm statute needs apply; as this federal lawsuit addresses federal and constitutional claims, the only correct venue for redress is in federal court, 'regardless of where the defendant is found.'[4]

19. Russel is suing in Federal Court, not for violation of Virginia law, but under Federal Law due to the violations of Constitutional, Federal law, violated through Utah law. These violations must be addressed in federal court. Thus, as explained in paragraph 18, "the only correct venue for redress is in federal court, *regardless of where the defendant is found.*"

1.2 Defendants claim: Due process does not allow the exercise of personal jurisdiction over Judge Edwards.

20. This Court has personal jurisdiction over Defendants pursuant to Federal Rules of Civil Procedure 4(k)c - Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant when authorized by a federal statute.

21. The following federal statutes authorize this Court to exercise personal jurisdiction over the Defendants:

Section 28 U.S. Code § 1331 - Federal question

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[3] https://civilprocedure.uslegal.com/jurisdiction/personal-jurisdiction/personal-jurisdiction-in-federal-courts/

[4] https://civilprocedure.uslegal.com/jurisdiction/personal-jurisdiction/personal-jurisdiction-in-federal-courts/

a. The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Section 28 U.S. Code § 1343 - Civil rights and elective franchise

b. The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

c. To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section § 1985 of Title 42;

d. To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section § 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

e. To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

f. To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Section 28 U.S. Code § 1367 - Supplemental jurisdiction,

g. In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention

of additional parties.

h. This lawsuit prays for an injunction against the State Court orders, whose constitutional violations form part of a state case.

i. Additionally, Kirk David Marsh cannot seek redress in Utah State Court, thus this is the only available venue in which to litigate claims against a third party.

28 U.S. Code § 1332 - Diversity of citizenship; amount in controversy; costs

j. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

k. citizens of different States;

1.2.1 Defendants claim: The Court lacks general jurisdiction.

22. As explained above, this is not a suit regarding Virginia law but a Federal suit regarding constitutional and federal violations. Russel is not claiming Judge Edward's affiliation with the State of Virginia, but diversity of affiliation that necessitates suit in federal court.

23. Defendants cite *Hassan v. Barzani. Hassan* is a federal lawsuit regarding violations of Virginia state law against the prime minister of the Kurdistan autonomous region in Northern Iraq. As this case was a state suit against a foreign dignitary argued in federal court, the federal court ruled that the long-arm statute did not reach the Kurdish prime minister.

a. Russel claims constitutional and federal violations, not violations of Virginia state law.

b. Defendants are not barred by the Foreign Sovereign Immunities Act, which would preclude them from federal jurisdiction.

24. Article 3 section 2 of the Constitution says, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

25. Whether a state statute is unconstitutional because the penalties for its violation are so enormous that persons affected thereby are prevented from resorting to the courts for the purpose of determining the validity of the statute, and are thereby denied the equal protection of the law, and their property rendered liable to be taken without due process of law, is a Federal question and gives the Circuit Court jurisdiction.[5]

26. When a state official does something unconstitutional, the official cannot possibly be doing it in the name of the state, because the Supremacy Clause of the Constitution means that the Constitution overrides all the laws of the states, invalidating any contrary laws. Therefore, when a state official attempts to enforce an unconstitutional law, that individual is stripped of his official character. He becomes merely another citizen who can constitutionally be brought before the court by a party seeking injunctive relief.[6]

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[5] *Ex parte Young*, 209 U.S. 123 (1908)
[6] *Ex parte Young*, 209 U.S. 123 (1908)

1.2.2 Defendants claim: This Court lacks specific jurisdiction.

27. Defendants state "Specific jurisdiction allows a court to have 'adjudicatory authority' over a defendant when the specific suit arises out of or relates to the defendants contact with the forum."

a. Defendants continually refer to Edwards' lack of contact with Virginia. Defendants note that the initial complaint is irrelevant to Virginia and Virginia law, however the complaint's focus is upon constitutional violations of Federal and Utah state law, which were sustained in the course of Edwards' employment - which is to uphold the rights of the people, including the right to due process through state, federal and constitutional law.

b. In this case, Utah state laws, as well as federal laws, were violated by Judge Edwards, which resulted in deprivations of Russel's federal and constitutional rights of liberty and property.

c. As Defendants argue, a defendant must have contact with the forum. As Defendants' livelihood is to uphold the laws and the Constitution, Defendants have sufficient contact with the federal forum.

d. Russel argues that the argument for specific jurisdiction in regards to federal court is satisfied.

2. Defendant claims: the Court lacks subject-matter jurisdiction to vacate the state-court judgment under the Rooker-Feldman doctrine

28. As Judge Sutton observed, "Rooker-Feldman is back to its old tricks of interfering with efforts to vindicate federal rights and misleading federal courts into thinking they have no jurisdiction

over cases Congress empowered them to decide."[7]

29. Rooker-Feldman stands for the proposition that lower federal courts do not have jurisdiction to review state court judgments. A federal court can entertain litigation where a state-court prosecution is brought in bad faith or to harass an individual; where the state criminal prosecution is patently unconstitutional; or where the state forum is inadequate. *Younger*, 401 U.S. at 49, 53; *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Trainor v. Hernandez*, 431 U.S. 434, 446–47 (1977) .[8]

30. Rooker-Feldman doctrine does not trump the Constitution.

> US Article III section 2 "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, …between a State and Citizens of another State,—between Citizens of different States."

31. "In *New Orleans Public Service, Inc. v. New Orleans*, Justice Scalia observed that "only exceptional circumstances justify a federal court's refusal to decide a case in deference to the states." 491 U.S. 350, 368 (1989).[9]

32. "Federal courts have established a series of prudential doctrines to avoid conflicts with state proceedings. The metes and bounds of these doctrines (Younger abstention, federal habeas corpus, and the Rooker-Feldman doctrine) may be complicated, but the animating principles are straightforward: Abstention or deference is warranted only where there is either an ongoing

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[7] *VanderKodde v. Mary Jane M. Elliott, P.C.* 951 F.3d 397 (6th Cir. 2020) (Sutton, J., concurring).

[8] https://www.supremecourt.gov/DocketPDF/20/20-659/181532/20210611174804829_No.%2020-659tsacFederalCourtsScholars.pdf

[9] https://www.supremecourt.gov/DocketPDF/20/20-659/181532/20210611174804829_No.%2020-659tsacFederalCourtsScholars.pdf

proceeding in state court or where a federal court challenge would improperly contradict a state court judgment."[10]

a. Utah did not argue that the lawsuit was inappropriate in the federal setting due to ongoing proceedings in state court, nor did they argue that the federal court would improperly contradict their state court judgment.

b. Defendants have ignored Russel's outstanding motion in state court, because a ruling on the motion would be incriminating:

i. If the Utah Court rules to amend the support orders, they admit the order was improperly given.

ii. If they decline to change the order, they are *again* violating their own state statutes, and further violating Russel's constitutional and federal rights, continuing the entrapment.

c. Instead, the Defendants utilized legal maneuvering, attempting to prohibit the federal government from *properly* injuncting a state court judgment.

33. Defendants cite *Bingham v. Bingham,* stating "In *Bingham,* much like Marsh does here, the plaintiff asked the court to examine a final family law ruling by a state court. The district held that such an exercise would controvert the *Rooker-Feldman* doctrine."

a. Defendants fail to acknowledge that *Bingham* is not a case of constitutional violations, but rather a case of procedural error.

b. Additionally, *Bingham* did not ask for injunctive relief.

c. Although Defendants have attempted to use *Bingham* as a precedence for this case, the two have so little parallel as to render the comparison inadequate.

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10 https://www.supremecourt.gov/DocketPDF/20/20-659/181532/20210611174804829_No.%2020-659tsacFederalCourtsScholars.pdf

34. Additionally, Kirk David Marsh and Shawnee Marsh have no standing in Utah, as they are not a party to the original suit, thus have no standing to appeal at the state level. Kirk and Shawnee Marsh are residents of Virginia. Russel Marsh is a resident of Virginia, as were his wife and children prior to their relocation to Utah in order to forum shop/exercise available undue influence.

35. The Federal Court is the only appropriate venue in which to seek damages: The United States District Court for the District of Colorado denied motions to dismiss complaints by parents in child welfare proceedings against state social service agency workers claiming that the workers had acted to deprive the parents of contact with their children because of discrimination against the parent's fundamentalist Christian viewpoint. The opinion provides a straightforward explanation of the Rooker-Feldman doctrine, explaining that the action here is not barred because the parents do not seek to overturn the state court dependency action but to obtain damages for the constitutional violations they claim arose during that action. *Starkey v. Boulder County Soc. Servs.*, 2006 U.S. Dist. LEXIS 84768 (D. Colo. November 21, 2006)

36. Federal Court is the only appropriate venue in which to seek an injunction.

a. In the introduction to their motion, Defendants state "Rather than having appealed the child custody decree in Utah as the legal process would allow, Marsh seeks relief here in Virginia federal court."

b. This misleading statement fails to acknowledge Russel's *Motion to Amend Support* that has not been acknowledged by the State of Utah, Judge Edwards nor Lauren Zimmer, and subsequently, the state has failed to act upon the motion, even after receiving the federal initial complaint. Thus, the Court has sufficient basis for determining that Utah is not an adequate forum in which to address relief.

37. Mr. Chief Justice Hughes ruled: "When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression."[11]

38. A federal court can entertain litigation where a state-court prosecution is brought in bad faith or to harass an individual; where the state criminal prosecution is patently unconstitutional; or where the state forum is inadequate.

39. The Defendants efforts to mislead this Court (as seen throughout their motion) are particularly offensive given that Russel is the subject of unconstitutional, biased, and illegal actions of the Utah Courts. In the judgment of a sentencing violation in Russel's criminal case, the Fourth District Appellate Court ruled:

    a. "And the Supreme Court has long recognized that "[t]hose whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings.[12]

    b. Limiting relief of a Criminal Rule 32(j) error to a habeas petition would place an undue burden on defendants who are only in that position because of a trial judge's mistake. And what makes matters worse is that petitioners may have to climb these hurdles without the assistance of counsel."[13]

40. As per Rooker-Feldman Doctrine, a federal court can entertain litigation where the state forum is inadequate; as the state forum is inadequate in this case, federal court is appropriate in each

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[11] *Sterling v. Constantin*, 287 U.S. 378 (1932)
[12] *US v. Kirk Russel Marsh* No. 18-4609 (2020), quoting *Rodriquez v. United States*, 395 U.S. 327, 330 (1969)
[13] *US v. Kirk Russel Marsh* No. 18-4609 (2020)

of the seven claims addressed of the initial complaint:

41. Initial complaint section 1: Entrapment via child support orders -

a. The first action in this claim was the imposition of child support in excess of Russel's capability to pay; Judge Edwards used a divorce trial to further convict and punish an already convicted felon, whose crimes had already been adjudicated in the appropriate court.

b. The judgment was unconstitutional and was levied against him in bad faith, and therefore the state forum is inadequate for redress. This is in part due to the bias of the state court and the undue influence of Lauren's family, as will be proven in discovery and trial.

c. Additionally, Utah state family court does not have jurisdiction to address civil damages.

d. The second action in this claim is that criminal actions were committed against Russel in the course of the first action (the child custody settlement), which entrap Russel to violate a federal statute for criminal non-support, thus violating Russel's constitutional rights. It is the second action that is the basis for this lawsuit, and is within the jurisdiction of the federal court.

e. The Supreme Court ruled: "No adequate remedy at law, sufficient to prevent a court of equity from acting, exists in a case where the enforcement of an unconstitutional state rate statute would require the complainant to carry merchandise at confiscatory rates if it complied with the statute, and subject it to excessive penalties in case it did not comply therewith, and its validity was finally sustained."[14]

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[14] *Ex parte Young,* 209 U.S. 123 (1908)

f. Although Russel has asked this Court to vacate the supplemental divorce judgment of August 16, 2019, Russel is not alleging that the federal government has jurisdiction to relitigate the proceedings. Rather, the petition for habeas relief is an injunction against the second action (federal and constitutional violations against Russel, i.e. criminal entrapment committed by Judge Edwards, among other charges) which was committed in the course of the first action (the supplemental divorce judgment of August 16, 2019).

i. Petitions for habeas corpus are an explicit exception to *Rooker-Feldman,* so that lower federal courts *do* serve as courts of appeal for state court criminal convictions.[15]

ii. Utah will argue that this is not a question of state court criminal convictions. Again, Judge Edwards was very clear that his judgments were a punishment for Russel's criminal actions, thus using family court to punish Russel for criminal actions.

iii. 28 USC § 2254 is an exception to Rooker-Feldman which authorizes federal courts to grant a writ of habeas corpus, even after a state court has denied it. Habeas corpus is a recourse in law by which a report can be made to a court in the event of unlawful detention or imprisonment, to determine whether their detention is lawful.

iv. If the judgment is allowed to stand, Russel could, at any time, be arrested for felony criminal nonsupport via judicial entrapment due to arrearages accrued since January 1, 2024, or (depending upon this Court's ruling of Kirk Marsh's support payments), since September 1, 2019.

[15] https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1657&context=ndlr

a. Criminal Nonsupport is a felony of the third degree if the defendant:

i. Committed the offense while residing outside of Utah; or

ii. When the total arrearage is in excess of $10,000[16]

v. Federal habeas courts will not hear procedurally defaulted claims except in narrow circumstances: a showing of cause and prejudice, *Wainwright v. Sykes*, 433 U.S. 72, 82–84 (1977), or actual innocence, *House v. Bell*, 547 U.S. 508, 536–37 (2006); *Schlup v. Delo*, 513 U.S. 298, 327 (1995).[17]

1. In this case, Lauren and the Court - in a showing of cause and prejudice - specifically violated Russel's (and by extension third party) rights regarding additional punishment for a previous conviction outside the jurisdiction of the Court.

2. Russel's actual innocence, in that no action outside of his adjudicated criminal proceedings was the basis for the abuse he endured in Utah Court, is the factor at play in the initial complaint.

g. *Steffel v. Thompson* held that a federal court could enjoin state court proceedings where a litigant sought to enjoin a possible, future prosecution. 415 U.S. 452 (1974). In this instance, vacating the child custody judgment is an injunction based upon prospective damages i.e. criminal charges and/or prison for criminal nonsupport.

h. 28 U.S.C. § 2283 provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its

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[16] Utah Criminal Code 76-7-201

[17] https://www.supremecourt.gov/DocketPDF/20/20-659/181532/20210611174804829_No.%2020-659tsacFederalCourtsScholars.pdf

judgments." *Mitchum v. Foster,* 407 U.S. 225, 237, (1972)

In *Mitchum v. Foster*, the Court held that 42 U.S.C. §1983 "expressly authorized" federal courts to issue injunctions against state court proceedings, and that § 1983 suits accordingly do not fall within the scope of the Anti-Injunction Act's general prohibition. 407 U.S. § 225, 242–43 (1972).[18]

Russel seeks an injunction against the supplemental divorce judgment in order to halt prospective damages, including illegal incarceration. Russel is not asking the federal court to relitigate the judgment, but an injunctive vacating of the judgment. Russel's current filing in Utah state court asks for the court to follow the state statute with regard to child support, which has not been acted upon.

i. The violations of constitutional rights were sustained as a result of criminal action against Russel. There is no redress for criminal action through appeals in the Utah family court system. If this Court were to dismiss these claims, Russel would be forced to attempt redress through the preposterous precedent set by Judge Edwards - using the family court as a vehicle to address damages from a secondary matter in an improper setting.

j. Russel asked the support order to be addressed through the Utah court system, but Defendants have chosen not to respond. Should Defendants now choose to respond to Russel's motion to amend child support, they would begin to address the first claim (the child support judgment).

   i. Should Utah choose to fix the first claim (child support judgment), the action could not address the entrapment, negligence, illegal order of punitive

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18 https://www.supremecourt.gov/DocketPDF/20/20-659/181532/20210611174804829_No.%2020-659tsacFederalCourtsScholars.pdf

judgment, and other charges. However, this action would give Russel prospective relief from further prosecution.

ii. Russel does not have the power nor jurisdiction to seek remedy against Judge Edwards, Ms. Emmons, nor the state of Utah for the criminal actions, negligence or violations of constitutional rights committed against him in State Court. As pertaining to this complaint, "But sometimes, if the consequences of the judge's actions cannot be taken back, appeal is simply insufficient and, as Justice Harlan put it in another context, "it is damages or nothing."[19]

42. Initial complaint section 2: Violations against a 3rd party -

a. Rooker-Feldman *cannot* be applicable in this case because Kirk David Marsh and Shawnee Marsh, Russel's parents, are third parties in the divorce proceeding, and therefore have no standing in which to file an appeal in the Utah State Court.

b. The only option for redress for a third party violation, whether through Russel's efforts or Kirk's, is through the federal courts.

i. Kirk David and Shawnee Marsh have submitted a brief stating the third party standing exists through Russel.

ii. Should this Court find it appropriate or necessary for them to enjoin the suit, the brief provides their willingness to be added.

c. A § 1983 lawsuit against a judicial officer is appropriate when: "Appeal is not a viable course of action at all: nonparties, after all, have no right of appeal."[20]

43. Initial complaint section 3: Judge Edwards awarded punitive damages to Lauren Marsh against

[19] Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 410 (1971) (Harlan, J., concurring in the judgment) ("For people in Bivens' shoes, it is damages or nothing.").
[20] Harvard Law Review - JUDICIAL IMMUNITY AT THE (SECOND) FOUNDING: A NEW PERSPECTIVE ON § 1983

Russel Marsh, Kirk Marsh and Shawnee Marsh -

a. Judge Edwards does not have, and has never had, jurisdiction to award punitive damages in an adjudicated federal criminal case, therefore has no jurisdiction to redress the action through motions and appeals.

   i. In the egregious abortion of law *Stump V. Sparkman,* Judge Stump was granted judicial immunity because, as part of his judicial functions, he had authority over sterilizations, albeit in a different situation, therefore the action was not in 'clear absence of all jurisdiction'[21]

   ii. Even under the stringent guidelines established by *Stump v. Sparkman,* Judge Edwards is not eligible for judicial immunity as he ordered punitive damages in 'clear absence of all jurisdiction' over the adjudicated criminal case.

b. Additionally, civil damages cannot be addressed through petitions to modify in a court that lacks jurisdiction over civil damages. In *United States v. Marsh,* the Fourth District Appellate Court ruled "It is well known that if a court lacks jurisdiction to hear an appeal, then it should come as no surprise that a skilled litigant will forego the process of filing a direct appeal and instead seek habeas relief - a court cannot provide a remedy when it is not in its power to do so."[22]

c. Judge Edwards distinguished when he *was* awarding punitive damages and when he was allegedly *not* awarding punitive damages.

   i. At the divorce trial, Judge Edwards stated "Given the facts of this case, the reason for the respondent's lack of earnings, his own fault, his own criminal conduct, the needs of the parties' minor children for support, the Court finds

[21] *Bradley v. Fisher,* 80U.S.(13Wall.)335,351(1872).
[22] *US v. Kirk Russel Marsh* No. 18-4609 (2020)

that it is justified in deviating from the guidelines in ordering respondent to pay petitioner child support in the amount of $700 per month for base child support."

ii. At a later hearing, Edwards acknowledged his lack of jurisdiction over Russel's federal case; Edwards stated, in this instance, his motivation was *not* punitive: "However, this Court is not punishing him anew for the crimes he committed. You know, I'm not withholding his parent-time because he committed these financial crimes that were punished in the federal system."[23]

iii. Judge Edwards repeatedly justified Russel's criminal actions as a basis for his ruling.

44. Initial complaint section 4: Conspiracy against rights (Malpractice, HIPAA privacy violation via Ms. Emmons and Judge Edwards)

a. Russel lives in Virginia, and participated in both court hearings and therapy via video from Virginia, and Ms. Emmons and Judge Edwards live, work, and are employed in Utah

b. The applicable federal statute is 28 U.S. Code § 1332 - Diversity of citizenship; amount in controversy; costs -

1. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs and

2. is between citizens of different States

45. Intital complaint section 5: Negligent violation of state investigation and reporting laws

[23] *Marsh v. Marsh*, Transcript for hearing 04.01.2021

concerning child abuse -

a. Russel has been barred by Judge Edwards from appealing this action through the Utah court system:

   i. On April 1, 2021 Judge Edwards ordered, as pertaining to violations of Russel's rights and abuse allegations: "I'm reminding the parties -- I've already ordered it, so I don't need to order it again, but the parties are not to have those kinds of discussions with the children. And I will hold the parties in contempt if I find that those matters are proved by clear and convincing evidence, of course, which is the contempt standard, but I'm not going to hesitate in the future to hold the parties in contempt if there are violations after today..... I don't want to receive motions on my desk about people being held in contempt for things that have happened in December and January and February and March of 2020 and 2021."[24]

   ii. This further endangered Russel - a contempt charge would have violated the terms of Home Confinement and/or Supervised Release, and Russel would have been sent to Cumberland Federal Prison Camp to remain incarcerated for the remainder of his sentence, then for three years of supervised release. This completely removed Russel's ability to advocate for the children or for himself.

   iii. There's no redress for this other than damages

b. Russel is not attempting to remove jurisdiction from the state of Utah concerning further investigation of abuse of his children, in fact, this habeas plea is an injunctive demand the supplemental divorce judgment be vacated so Russel can regain

[24] *Marsh v. Marsh*, Transcript for hearing 04.01.2021

constitutional rights.

46. Initial complaint section 6: As Judge Edwards had supervisory duty over Dana Emmons, he was negligent in his stewardship over Dana's fiduciary duty as a court appointed counselor -

a. As constitutional violations of collusion and negligence can only be addressed in federal court, Rooker-Feldman cannot apply

47. As section 7 of the complaint did not apply to Judge Edwards, Russel reserves the right to argue these points at a later date.

48. This appeal for habeas relief prays for an injunction to enjoin state court proceedings against rulings that place Russel in a situation of future criminal charges and incarceration *(Steffel v. Thompson*), as well as violates Russel, Kirk and Shawnee Marsh's constitutional and federal rights.

3. Defendants claim: The State of Utah is entitled to Eleventh Amendment immunity on all claims

49. In the case cited by Defendants, *Lapides v. Bd. of Regents of Univ. Sys. of Georgia:*

a. Petitioner, a professor in the Georgia state university system, filed a state court suit against respondents - the system's board of regents (hereinafter Georgia or State) and university officials in their personal capacities and as state agents-alleging that the officials had violated state tort law and 42 U. S. C. § 1983 when they placed sexual harassment allegations in his personnel files. The defendants removed the case to Federal District Court and then sought dismissal. Conceding that a state statute had waived Georgia's sovereign immunity from state-lawsuits in state court, the State

claimed Eleventh Amendment immunity from suit in the federal court. The District Court held that Georgia had waived such immunity when it removed the case to federal court. In reversing, the Eleventh Circuit found that, because state law was unclear as to whether the state attorney general had the legal authority to waive Georgia's Eleventh Amendment immunity, the State retained the legal right to assert immunity, even after removal.

b. In *Lapides v. Bd. of Regents of Univ. Sys. of Georgia,* The Supreme Court of the United States ruled that a state voluntarily waives at least part of its Eleventh Amendment immunity when it invokes a federal court's removal jurisdiction.

50. In *Lapidis*, Georgia was brought involuntarily into the case as a defendant in state court, but Georgia then voluntarily removed the case to federal court, thus voluntarily invoking that court's jurisdiction. Unless this Court is to abandon the general principle requiring waiver or there is something special about removal in this case, the general principle should apply

a. In Russel's case, the state refused to address the concerns at state levels, forcing the matter to federal court. Thus, this Court can reasonably ascertain that the move from state to federal court is voluntary by the Defendants, given their inability to address the claims in their own court.

b. Russel is not asking for relitigation on the federal level, but a federal injunction and a remand of the judgment back to the state court, necessitated by the Defendants actions.

c. Thus, in moving to the federal court, Defendants waive Eleventh Amendment Immunity as per *Lapides v. Bd. of Regents of Univ. Sys. of Georgia.*

51. Defendants' motion claims that there are two methods by which immunity can be overcome:

"Eleventh Amendment immunity is not without limits, and there are two methods by which immunity may be overcome…First, congress may explicitly legislate to abrogate this immunity. Second, the state may voluntarily waive its immunity from suit in federal court."

52. Defendants fail to mention there are actually FOUR methods to overcome immunity: it appears that the Defendants are purposely misleading the Court. In addition to the exceptions stated by Defendants (Congress can abrogate immunity or the State can waive the immunity), sovereign immunity can also be overcome by the *Ex Parte Young Exception*, which is applicable in this case, as well as *Arm of the State Doctrine*.

53. *Ex Parte Young Exception*

i. 209 US § 123 allows suits in federal court for injunctions against officials acting on behalf of states to proceed despite the states sovereign immunity, when the state acted contrary to any federal laws or contrary to the Constitution.

ii. Defendants violated the Fourteenth Amendment, due process, by establishing punishments so harsh that Russel would not challenge the laws, for fear of losing the challenge (ie - threats of being held in contempt for bringing issues to the court, which would subject Marsh to further incarceration for presumed criminal activity)

iii. Unconstitutional application of the Utah statute entraps Russel to violate federal criminal statutes - pay money he cannot pay, or face further prosecution and incarceration via the Attorney General (i.e. the state). Russel needs prospective relief from subjection to ongoing violations of the Constitution and federal law

iv. In *Ex parte Edward T Young,* the Court determined that it would be unfair to require challengers of a law to wait until they faced a harsh sanction before they could bring any kind of action questioning the validity of that law. The Court also noted that, although a number of cases had held that the state itself could not be sued, those cases did not prohibit enjoining a state *official,* as an individual, from carrying out some task on behalf of the state.

v. The court held that when a state official does something unconstitutional, the official cannot possibly be doing it in the name of the state, because the Supremacy Clause of the Constitution means that the Constitution overrides all the laws of the states, invalidating any contrary laws. Therefore, when a state official attempts to enforce an unconstitutional law, that individual is stripped of his official character. He becomes merely another citizen who can constitutionally be brought before the court by a party seeking injunctive relief.

vi. The Court, in laying out this doctrine, created two legal fictions:

1. that such a suit is not against the state, but merely against the individual officer, who cannot be acting on behalf of the state when he enforces a law that is unconstitutional

2. that an individual can be a state actor for 14th amendment purposes (which only prohibits unconstitutional acts by the state, and those who represent it) while remaining a private person for sovereign immunity purposes.

vii. The court noted that (in the case of *Young)* railroads could never recover the costs of obeying the law while waiting for it to be adjudicated unconstitutional

(i.e. Russel could never recover from damage of arrest/incarceration while waiting to fix unconstitutional rulings)

1. Based on these findings, the Court held that suits may be brought to enjoin state officials from enforcing unconstitutional laws in the United States District Courts, which have the power to enjoin those officials from enforcing such laws.
2. The facts of unconstitutional rulings apply to Russel and Kirk's situation.

54. The "*Arm of the State" Doctrine*: Eleventh Amendment immunity does not extend to all "lesser entities" associated with the state; rather it extends only to entities that the Court considers to be "arms" or "instrumentalities" of the state.

a. Varying weight to whether an entity is an "arm of the state" has been given to two factors: the degree of state control over the entity and the state-law classification of the entity. The only factor singled out as "of considerable importance" is whether the state is "obligated to bear and pay [any potential legal] indebtedness of the [entity]."
b. Because indemnification does not affect the *legal* obligation to pay, the inquiry is unchanged when a third party would indemnify the relevant entity, or when the state would indemnify a state official in a suit against him in his individual capacity.
c. As Dana Emmons, a state actor, should be indemnified by the State of Utah, Russel requests this Court to rule as to her status as a state actor.
d. Russel also requests this Court to rule that Judge Edwards is a private person for sovereign immunity purposes and a state actor for Fourteenth Amendment purposes as per *Ex parte Young*

55. In the case cited by Defendants, *Quern v. Jordan,* Defendants state "§ 1983 does not abrogate Eleventh Amendment immunity." *Quern* 'was held that retroactive welfare benefits awarded by a Federal District Court to the plaintiff class, by reason of wrongful denial of benefits by Illinois officials prior to the entry of the court's order determining the wrongfulness of their actions, violated the Eleventh Amendment, and that in, an action under 42 U.S.C. § 1983….a federal court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief."

a. Russel's case is limited to the federal court's remedial power of prospective injunctive relief.

b. This complaint is, as per *Quern,* applicable under § 1893 and consistent with the Eleventh Amendment

56. Defendants cited the Utah Governmental Immunity Act as the basis for retaining Eleventh Amendment Immunity. In the case cited by the Defendants in section 5.5.1 of their motion, *Wagner v. State of Utah*, state actors were negligent in their supervisory duties of a mentally incompetent man, Mr. Giese, who, while under the care and responsibility of the state, attacked and injured a woman, Wagner, in K-Mart.

a. Wagner sued the State for negligence in their supervision of Giese. The State argued that Giese's action was battery, which constitutes an exception to the waiver that acts to preserve the State's immunity.

b. Wagner argued that Giese's action could not constitute battery, as a battery charge involves intent, and Giese was mentally incompetent.

c. The Court determined that Giese was guilty of battery, and therefore the State was not liable.

d. The Utah Supreme Court ruled "We hold that the actor need not intend that his contact be harmful or offensive in order to commit a battery so long as he deliberately made the contact and so long as that contact satisfies our legal test for what is harmful or offensive."

e. In *Wagner*, the state and employees claimed immunity because the assault was not a result of negligence on behalf of the state nor state actors; the assault was the result of Geise's criminal actions (regardless of intent), therefore the state should be immune and Geise personally liable.

57. By the argument presented by Defendants, the state retains immunity for Judge Edwards' actions if Judge Edwards' actions hurt, injured or punished Russel, even if it was not malicious, so long as Edwards' actions satisfy the legal test for what is harmful or offensive (i.e. cruel and unusual).

58. If the State of Utah is granted Eleventh Amendment Immunity, it could only be because the actions of Michael Edwards and Dana Emmons are egregious to a nature to be beyond the statutes set forth in Utah's Governmental Immunity Act, which would stipulate guilt to a criminal extent.

59. Defendants state, "because Utah provided for exclusive jurisdiction in its own courts, Utah clearly intended to retain Eleventh Amendment immunity."

a. If Utah intended to keep exclusive jurisdiction in its own courts, Utah would have followed the statutes provided in order to preserve rights. However, the court chose to violate a felon to appease the demands of a petitioner.

b. By ignoring Russel's *motion to modify* in their own court, which motion addresseses unconstitutional applications of statutes and violations of civil rights, Utah has

conceded to moving the case to a federal jurisdiction, thus waiving their Eleventh Amendment immunity.

60. Defendants cite *Ford Motor Co. v. Dep't of Treasury of Ind.* In Ford, "the petitioner's claim is for a "refund," not for the imposition of personal liability on individual defendants for sums illegally exacted." Russel's claim is not for a "refund" but for prospective damages and an injunction against future harm.

61. In *Scheuer v. Rhodes*, 416 U.S. 232, 248-9 (1974), the Supreme Court rejected a claim of absolute immunity for state executive officers under 42 U.S.C. § 1983: Under the criteria developed by precedents of this Court, §1983 would be drained of meaning were we to hold that the acts of a governor or other high executive officer have "the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government."

62. The Fourteenth Amendment, section 1, is the governing law, which trumps the Eleventh Amendment. Amendment XIV Section 1 states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

63. The Supreme Court ruled: "While making a state officer who has no connection with the enforcement of an act alleged to be unconstitutional a party defendant is merely making him a party as a representative of the State, and thereby amounts to making the State a party within the prohibition of the Eleventh Amendment, individuals, who, as officers of the State, are

clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence an action, either civil or criminal, to enforce an unconstitutional state statute, may be enjoined from so doing by a Federal court."[25]

a. As Russel is preparing for unlawful felony criminal non-support charges, it is anticipated that charges would be brought through the Utah Attorney General's office.

b. This places the State of Utah as the enforcement arm of this action, therefore liable under § 1983.

c. Additionally, Russel asserts that The Utah Governmental Immunity Act (GIA) may be an unconstitutional statute, as addressed in section 5.5.1 of this countermotion.

4. Defendants claim: Judge Edwards is entitled to absolute judicial immunity for all claims

64. In their *Motion to Dismiss,* Defendants cite *Mireles v. Waco:* "all claims seeking damages must be dismissed against Judge Edwards, with prejudice, on the grounds of judicial immunity… There are only two exceptions to absolute judicial immunity: (1) when a judge's actions are taken outside his role as a judge, or (2) when the judge's actions are taken in the complete absence of jurisdiction."[26]

65. Defendants failed to mention that judicial immunity cannot be extended to cases seeking injunctive relief: Judicial immunity is not a bar to prospective injunctive relief against a judicial officer, acting in judicial capacity. *Pulliam v. Allen*, 466 U.S. 522 (1984)

66. In *Pulliam v. Allen*, 'The Court held that the precedent set by British common law relied on the

[25] *Ex Parte Young:* 209 U.S. 123 (1908)
[26] Memorandum Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss, 04.24.2024

issuance of writs, rather than the imposition of judicial immunity, to protect judicial independence. The United States never had a doctrine of judicial immunity from prospective relief, and there was no evidence that the lack of that protection created a chilling effect on judicial independence. The Court held that there was no reason to assume such immunity was necessary. There was no legislative history to indicate that Congress intended to insulate judges from injunctive relief. The Civil Rights Acts and their interpretations illustrate that Congress intended all state actors to be subject to such remedies to ensure the protection of Fourteenth Amendment rights.'[27]

67. In *US v. Kirk Russel Marsh,* Chief Judge Gregory stated, "I doubt the drafters of the relevant procedural rules at play in this case intended them to be read in a way that is more forgiving to judges than criminal defendants - the people least able to protect themselves in our justice system."[28]

68. Each of the seven claims discussed in the initial complaint shall be addressed in regards to judicial immunity:

1. Judicial Entrapment via child support ruling

69. As per *Bradley V. Fisher,* 'There are some limits on what judicial immunity covers. An example of a judge acting in "clear absence of all jurisdiction" would be something like a probate court judge trying and sentencing a party for a criminal offense.'[29]

70. Utah will argue that Judge Edwards' ruling of Russel Marsh was not a punishment for a criminal offense levied in family court. Russel must disagree; as records clearly show, Judge

[27] *Pulliam v. Allen* 42 US 522 (1984) https://www.oyez.org/cases/1983/82-1432
[28] *US v. Kirk Russel Marsh* No. 18-4609 (2020)
[29] *Bradley V.Fisher,* 80U.S.(13Wall.)335,351–52(1872).

Edwards stated intention was to punish Russel for his criminal acts through child support, which set up impending felony criminal non-support charges against Russel.[30]

71. By his ruling, Judge Edwards entrapped Russel into a situation where Russel is committing a crime he would otherwise not commit. Judges do not have jurisdiction to entrap anyone into committing an offense. By doing so, Edwards committed a "judicial act" that was undertaken in "clear absence of all jurisdiction."[31]

72. In effect, Judge Edwards operated a debtor's prison.

a. Judicial immunity cannot be extended to cases seeking injunctive relief as the Supreme Court ruled in *Pulliam v. Allen*, 466 U.S. 522, 536 (1984).

b. In that case, the Court refused to extend judicial immunity from monetary damages to shield a state court magistrate from liability for injunctive relief in an action brought under 42 U.S.C. §1983. The facts of that case are: After respondents were arrested for non-jailable misdemeanors, petitioner, a Magistrate in a Virginia county, imposed bail, and when respondents were unable to meet the bail, petitioner committed them to jail. Subsequently, respondents brought an action against petitioner in Federal District Court under 42 U.S.C. §1983, claiming that petitioner's practice of imposing bail on persons arrested for non-jailable offenses under Virginia law and of incarcerating those persons if they could not meet the bail was unconstitutional. The court agreed and enjoined the practice, and also awarded respondents costs and attorney's fees under the Civil Rights Attorney's Fees Awards

[30] See initial complaint sections 1, 3
[31] *Bradley V. Fisher*, 80U.S.(13Wall.)335,351(1872).

Act of 1976. Determining that judicial immunity did not extend to injunctive relief under §1983 and that prospective injunctive relief properly had been awarded against petitioner, the Court of Appeals affirmed the award of attorney's fees.[32]

c. This case is similar, yet more egregious, in that Russel is being subjected to jail time for a felony that he has been ordered to commit.

73. Russel's current arrearage depends upon how the Court views Kirk's support payments from September 1, 2019 - December 21, 2023. Lauren has, through her attorney, threatened to file a *motion to enforce* to recover support arrearages.

a. If the Court views Kirk's payments as gifts to *Lauren*, as Kirk intended, then Russel is currently in arrears in excess of $50,000, which would be the basis for immediately sending Russel back to jail.

b. If the Court views Kirk's payments as legal obligations *to* Kirk, it would be in violation of Kirk's Constitutional rights. The current arrears would be ~$8,000 for Russel and mounting monthly; this would be the basis for sending Russel to jail within two months or less.

74. Russel's request for injunctive relief is urgent, given the threat of criminal actions and Lauren's impending *motion to enforce* combined with the Utah court's inaction on Russel's *motion to modify.*

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32 https://www.justice.gov/crt/case-document/file/1209641/dl?inline#:~:text=Indeed%2C%20the%20United%20States%20Supreme,nature%2C%20were%20taken%20in%20the

2. Lack of Due Process against a party not of the suit

75. Kirk Marsh is not a party in the divorce proceedings, so should not be financially obligated by the ruling. Thus, Judge Edwards clearly acted outside his jurisdiction in obligating Kirk to pay Russel's debts.

76. If there is *any* ambiguity as to whether Edwards was *really* obligating Kirk and not Russel, it was *not* ambiguous when Kirk and Shawnee Marsh were ordered to provide all transportation, lodging, etc for the children.

a. The ruling is as follows: "Given the facts of this case and the Petitioner's move to Utah being made necessary by Respondent's criminal acts, Respondent shall pay for the cost for his parent time with the minor children. Respondent's parents are to facilitate Respondent's parent time by providing the transportation, care, housing and supervision of the minor children for these time periods. Accordingly, one or both paternal grandparents shall accompany the transportation.[33]

3. Punitive Damages Awarded to Lauren against Russel, Kirk and Shawnee Marsh

77. This constitutes an Eighth Amendment Violation of Cruel and Unusual Punishment to a convicted prisoner via punitive damages awarded to Lauren.

78. Judge Edwards does have jurisdiction to deviate from the child support guidelines as per Utah Code 78B-12-202 (3) - "If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

i. The standard of living and the situation of the parties

[33] *Marsh v. Marsh supplemental divorce decree* 08.16.2019

ii. The relative wealth and income of the parties;

iii. The ability of the obligor to earn;

iv. The ability of the obligee to earn;

v. The ability of an incapacitated adult child to earn, or other benefits received by the adult child or on the adult child's behalf including Supplemental Security Income:

vi. The needs of the obligee, the obligor, and the child;

vii. The ages of the parties; and

viii. The responsibilities of the obligor and the obligee for the support of others."[34]

79. The discretion of guideline rebuttal does fall to the jurisdiction of Judge Edwards, but the conditions in this case did not justify an award above the guidelines:

a. Although the Utah statute says the relevant factors are not limited to the above list, Defendants cannot reasonably argue that a Judge should consider criminal actions of an incarcerated individual with no assets as a justification for awarding *above* the guideline.

b. Pertinent facts include Russel had no assets, income nor ability to earn more than $60/month. The children's mother had ample funds and free housing, as stated in her financial filings to the court.

c. Additionally, Lauren was receiving a voluntary $700/month from Kirk.

80. The justification for guideline deviation was clearly outside the jurisdiction of Judge Edwards, as Edwards explained in his child support ruling:

a. Given the facts of this case, the reason for the respondent's lack of earnings, his own

[34] Utah Code 78B-12-202 (3)

fault, his own criminal conduct, the needs of the parties' minor children for support, the Court finds that it is justified in deviating from the guidelines ….simply because it would be inequitable to the parties' children to order $30 a month child support where their father is in prison because he committed a criminal act.[35]

b. As referenced previously, even under the stringent guidelines established by *Stump v. Sparkman,* Judge Edwards is not eligible for judicial immunity, as he ordered punitive damages in 'clear absence of all jurisdiction'

c. Additionally, Defendants argued that, as support payments were not made to a sovereign, they have not been illegally seized. The action of the court to mandate payment to a third party, under penalty of criminal non-support for their son, does create an illegal seizure of property.

d. The additional fact of obligating a non-party to the suit is a further violation of due process. This is in clear absence of jurisdiction.

4. Conspiracy against rights (Malpractice, HIPAA violation via Ms. Emmons and Judge Edwards)

81. As explained in the initial filing, Russel's rights of privacy and fair and impartial treatment were violated by the court-ordered AFCC counselor. When violations were brought to the attention of the Court, Edwards not only dismissed the request for relief, he coerced the victim back to the abuser. Edwards said, "Mr. Marsh, you are to re-engage with Ms. Emmons, and you

[35] *Marsh v. Marsh* supplemental divorce decree transcription 08.16.2019

are to take advantage of her services. You're to listen to what she recommends, and you're to do what it takes to see this process through."[36]

82. Judge Edwards then threatened Russel with a contempt charge, should Russel bring his concerns to either his children or the court: "I'm not going to hesitate in the future to hold the parties in contempt if there are violations after today." The judge's rulings show support of Lauren Zimmer and Dana Emmons in their conspiracy. This violation of due process is outside of the judge's jurisdiction.

83. 'Given the trust placed in judicial tribunals to dispense justice, one might consider harms that accrue from the abuse of judicial authority to be even more significant than those from private violence.'[37]

5. No investigation of reports of child abuse

84. Russel has been barred by Judge Edwards from pursuing this concern. In this instance, threatening contempt of court is breach of due process: On April 1, 2021 Judge Edwards ordered, as pertaining to violations of Russel's rights and abuse allegations: "I'm reminding the parties -- I've already ordered it, so I don't need to order it again, but the parties are not to have those kinds of discussions with the children. And I will hold the parties in contempt if I find that those matters are proved by clear and convincing evidence, of course, which is the contempt standard, but I'm not going to hesitate in the future to hold the parties in contempt if there are violations after today….. I don't want to receive motions on my desk about people being held in contempt for things that have happened in December and January and February

[36] *Marsh v. Marsh* transcript, Court's ruling 04.01.2021
[37] Harvard Law Review - JUDICIAL IMMUNITY AT THE (SECOND) FOUNDING: A NEW PERSPECTIVE ON § 1983

and March of 2020 and 2021."[38]

85. Although Edwards has discretion as to whether or not to order a child abuse investigation, he clearly acted outside of his jurisdiction when he barred Russel from talking to his girls about about child abuse, and also when he barred Russel from investigating the safety of his children.

a. This further endangered Russel - a contempt charge would have violated the terms of Home Confinement and/or Supervised Release, and Russel would return to Cumberland Federal Prison Camp for the remainder of his sentence, and for three years of supervised release. This completely removed Russel's ability to advocate for the children or for himself.

b. Edwards' justification for supervised parent time after the abuse allegations was: "if Mr. Marsh is never alone with the parties' minor children during this parent-time period, one of his parents will be able to vouch and certify that the sort of conversations the Court has prohibited are not occuring with the children."[39]

i. The muzzling of the children regarding anything that involves home life continues today.

ii. The damages from the Defendants' actions will continue to impact Russel and the children in the future.

6. Conspiracy, failure to supervise

86. Collusion by a Judge and a state actor under his jurisdiction must be a federal matter for conspiracy, as the actions are taken in 'clear absence of jurisdiction.'

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[38] *Marsh v. Marsh* transcript, Court's ruling 04.01.2021
[39] *Marsh v. Marsh* transcript, Court's ruling 04.01.2021

a. Regarding Judge Edwards, there is quite a spectrum of possible tests for supervisory liability: it could be imposed where a supervisor has actual knowledge of a subordinate's constitutional violation and acquiesces, see, e.g., *Baker v. Monroe Twp.*, 50 F. 3d 1186, 1994 (CA3 1995); *Woodward v. Worland,* 977 F. 2d 1392, 1400 (CA10 1992);

b. or where supervisors 'know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see,' *International Action Center v. United States,* 365 F. 3d 20, 28 (CADC 2004) (Roberts, J.) (quoting Jones v. Chicago, 856 F. 2d 985, 992 (CA7 1988) (Posner, J.));

c. or where the supervisor has no actual knowledge of the violation but was reckless in his supervision of the subordinate, see, e.g., Hall, supra, at 961; or where the supervisor was grossly negligent, see, e.g., *Lipsett v. University of Puerto Rico*, 864 F. 2d 881, 902 (CA1 1988).

d. Supervisory liability runs against the individual, is based on his or her personal responsibility for the constitutional violation and does not require any proof of official policy or custom as the "moving force" behind the conduct. *City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985) (quoting *Polk County v. Dodson*, 454 U.S. 312, 326 (1981)),

e. In their motion, Defendants state "Marsh's allegations of a conspiracy cannot overcome judicial immunity"

   i. Please see Section 28 U.S. Code § 1343 - Civil rights and elective franchise, sections a-e

ii. The Supreme Court in *Randall v. Brigham*, ruled that judges of general jurisdiction were not civilly liable for judicial acts, even when they exceeded their jurisdiction, "unless perhaps when the acts, in excess of jurisdiction, are done maliciously or corruptly."

87. If this Court were to decide that Judge Edwards has judicial immunity in any of the above claims, the Court would still have jurisdiction over his actions because, absent immunity for *all* charges, Supplemental Jurisdiction applies as per Section 28 U.S. Code § 1367

88. In *Scheuer v. Rhodes*, 416 U.S. 232, 248-9 (1974), the Supreme Court rejected a claim of absolute immunity for state executive officers under 42 U.S.C. § 1983:

a. Under the criteria developed by precedents of this Court, § 1983 would be drained of meaning were we to hold that the acts of a governor or other high executive officer have "the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government."

7. Dana. Emmons - conflict of interest

89. As this section of the countermotion pertains to Judge Edwards' judicial immunity, and he is not listed on this section of the initial complaint, Russel will reserve arguments concerning this claim against Dana Emmons and the State of Utah.

5. Marsh has failed to state any viable claims.

90. The facts show Constitutional violations of the Fourth, Eighth and Fourteenth Amendments

and violations of Federal statutes 18 USC § 228, § 242 and § 241, 42 USC § 1983, 42 U.S.C. §1985, as well as Utah statutes under the Fourteenth Amendment.

91. Each of the claims are viable and supported by statute and the Constitution, as explained here and enumerated in the original complaint.

92. Although the violations of the Fourth, Eighth and Fourteenth Amendments to the Constitution were described in the initial complaint, should the Court feel it appropriate, Russel petitions the Court to allow modifications to the initial complaint that clarifies Constitutional Amendment violations.

5.1 Defendants claim: Judicial Entrapment is not a recognized cause of action

93. The Defendants' motion claims that 18 USC § 241 and § 242 are inapplicable as 'they are criminal statutes and do not impose civil liability:'

a. Russel appreciates Defendants' acknowledgment that Judge Edwards violated federal criminal statutes.

b. Russel reminds Defendants that Edwards' violations, taken in a judicial role, serve to deprive Russel of freedom without due process, as evident by Russel's impending arrest.

c. Although not addressed in the initial complaint, Russel claims that Edwards' contempt threat of April 1, 2021 was an unjust threat to Russel's freedom and rights to due process, as Russel *could not* advocate for his children, nor his privacy, without facing incarceration.

d. That criminal actions were taken by a state actor does not preclude a private citizen from claiming federal law and the Constitution are violated, causing the private

citizen harm.

94. Defendants state: "§ 1983 is inapplicable because Marsh does not allege any violation of federal rights."

a. Russel repeatedly alleges violations of federal rights - Russel's Fourteenth Amendment rights of due process, and Eighth Amendment right of no cruel and unusual punishment were violated.

b. Defendants allege an illegal ruling, clearly given outside the judge's jurisdiction, does not violate due process. Regardless, these actions are a *clear* violation of due process.

i. Given Defendants' motion to dismiss, it is clear this suit should stay in federal court, as Defendants refusal to acknowledge the violations implies their unwillingness to properly redress the complaints in their own court.

95. Defendants state that Marsh's allegations point only to Utah state law.

a. Russel disagrees. As evidenced, Russel alleges that Judge Edwards' violated constitutional, federal criminal and civil law.

b. Defendants' violation of state and federal law clearly violated Russel's federal and Constitutional rights.

96. Defendants state: "Under Utah law, entrapment is an affirmative defense to criminal liability, not a civil cause of action"

a. Russel notes that entrapment by Judge Edwards is a criminal defense to Russel's future prosecution, and

i. Russel is seeking prospective relief from prosecution of criminal federal statute 18 U.S. Code § 228 - Failure to pay legal child support obligations - that will

lead to criminal charges if injunctive relief is not given. As Defendants have alleged *'Marsh does not allege any violation of federal rights*,' Russel re-asserts that prosecution of a felony criminal statute, due to the illegal actions of Judge Edwards, is a violation of Russel's federal rights of due process and liberty.

ii. Violations against the Fourteenth Amendment negate the Eleventh Amendment immunity claim: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

b. Being entrapped to commit an offense is a violation of Russel's federal rights. Russel again appreciates Defendants' acknowledgement that Judge Edwards' actions violate criminal statutes: whether or not Judge Edwards is criminally charged for his action is irrelevant to the fact that judicial entrapment is a violation of Russel's constitutional rights.

97. In Defendants' cited case, *State of Utah v. Torres,* defendant Torres suggested (to an undercover police officer) an elementary school as a location for a drug sale, and was then arrested for distribution of controlled substances in a drug-free zone. Torres unsuccessfully claimed entrapment as defense for the action.

a. In *Torres,* the court ruled "conduct merely affording a person an opportunity to commit an offense does not constitute entrapment."

b. In Russel's case, he was not merely afforded an opportunity to commit an offense, he was entrapped into an offense he would not otherwise commit.

c. Defendants' citing of this case, given the very different natures of the cases, is

offensive.

5.2 Defendants claim: Marsh lacks standing to bring a § 1983 claim for violations of the Fourth and Fourteenth amendment on behalf of his parents

98. Lack of standing didn't stop Judge Edwards from ordering Kirk and Shawnee Marsh to obligations in the supplemental divorce judgment. Rather, Russel is addressing the issue in the appropriate venue, set by the Constitution and Federal Law, - Federal Court. Kirk and Shawnee Marsh did not, and do not, have standing to appeal the divorce proceeding in the Utah courts.

99. Defendants state "Again, 18 U.S.C §241 and 242 impose criminal, not civil, liability, and thus are inapplicable."

a. Russel appreciates Defendants' acknowledgment that Judge Edwards violated federal criminal statutes.

b. Russel reminds Defendants that Edwards' violations, taken in a judicial role, serve to deprive Kirk and Shawnee Marsh of property without the due process of law.

100. Defendants state "Neither the state nor Judge Edwards in his official capacity are a "person" under § 1983." In *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the United States Supreme Court overruled *Monroe v. Pape*, by holding that a local government is a "person" subject to suit under Section §1983 of Title 42 of the United States Code: Civil action for deprivation of rights.

101. Defendants' cite *Will v. Dep't of State Police* to justify the state and Edwards not being a person. *Will* states: 'The Court found that § 1983 would not provide a federal forum for litigants who were seeking a remedy against a State for alleged deprivations of civil liberties because the Eleventh Amendment barred such suits unless the State has waived its sovereign

immunity or unless Congress has exercised its power under § 5 of the Fourteenth Amendment to override that immunity.'

a. As discussed in section 3 of this countermotion (regarding Eleventh Amendment immunity), should the state be granted Eleventh Amendment immunity, Judge Edwards and Dana Emmons must then be held as state actors for 14th amendment purposes while remaining private persons for sovereign immunity purposes.

b. In this case, whether or not the *state itself* is granted immunity is a diminished concern, as by accepting the immunity they are claiming indemnification for Edwards' and Emmons' actions

102. Defendants cite *United States v. Castellanos,* stating, "The Fourth Amendment protects people, not places." In *Castellanos*, police seized a suspicious Ford Explorer as it was transported on a car carrier, and upon search, found cocaine concealed in the gas tank. Castellanos, owner of the vehicle and drugs, used illegal search and seizure as the basis for his defense.

a. The police had, with probable cause, seized the vehicle; thus, as response to Castellanos ridiculous assertion that the vehicle's rights had been violated by the search, the court stated that Fourth Amendment protections extend to people, not places.

b. In Kirk and Shawnee Marsh's case, the police had no probable cause to seize their funds. The court's justification, as they seized assets, was Kirk and Shawnee's willingness to do 'what was best for the children.'

103. Defendants' defense of this action is that the Fourth Amendment could not have been violated against Kirk and Shawnee Marsh.

a. Defendants argue, as per Castellanos, that a violation of the Fourth Amendment

would have been against Kirk and Shawnee Marsh's *money*, not the people themselves. If illegal seizure is only a violation of the object seized, and not the person from whom it was seized, then we'd have an entire second judicial system dedicated to protecting bank accounts or Ford Explorers rather than the people who own the property.

104. Defendants state "The protection afforded by the Fourth Amendment is aimed exclusively at state action" as per *United States v. Ellyson:*

a. Defendants claim that "no state actor was ever in possession of Marsh's parents' money."

i. This is untrue: Kirk and Shawnee Marsh paid ~$5000 to Dana Emmons, a state actor.

ii. Additionally, the illegal seizure and reallocation of Kirk and Shawnee's money, under the threat of criminal charges against their son, was a state action.

iii. Whether or not the money was in possession of a state actor is not the state action in question: the state action at play is the order to illegally reallocate Kirk and Shawnee's money.

iv. Again, *money itself* was not violated by the illegal seizure, the *people* were violated when their money was illegally seized.

b. Russel is very confused as to how *Ellyson* pertains to this case: Ellyson's girlfriend gave police evidence against him, for fear of being charged with aiding and abetting. Ellyson claimed the police violated his Fourth Amendment rights through Ellyson's girlfriend. As his girlfriend was not a state actor, the court concluded that Ellyson's Fourth Amendment rights had not been violated; Ellyson could not assert that his

rights were violated through his girlfriend.

i. Defendants seem to use *Ellyson* to state that Russel's parents cannot assert Fourth Amendment violations through Russel, and even if they could, the violation was actually against money.

ii. This is a very confusing twisting of law and precedence.

105. Defendants state in their motion "As for Marsh's parents Fourteenth Amendment rights, 'third parties themselves will usually be the best proponents of their own rights."

a. Defendants' cited case, *Singleton v. Wulff,* states 'The Supreme Court of the United States does not say that there must be an absolute obstacle to the directly affected party bringing suit, only that there is some genuine impediment.'

b. Defendants state "to overcome the prudential limitation on third-party standing, a plaintiff must demonstrate … a hindrance to the third party's ability to protect his or her own interests."

1. Kirk and Shawnee Marsh parents did not, and do not, have standing to appeal the divorce proceeding in the Utah courts.

2. Russel was constrained from appealing the 2019 supplemental divorce judgment:

a. Russel had no assets in which to pay an attorney, neither by his own means nor by his parents:

i. Judge Edwards denied Russel assets, although requested in Russel's pre-trial brief: "Respondent, as set forth above, has no ability to pay Petitioner's fees and costs in this matter. Respondent has no ability to pay his own fees and costs in this matter. Respondent's parents have financed his defense of this action for him. Specifically, Respondent's portion of the

home equity should not be considered income to him for purposes of determining his ability to allow Petitioner to prosecute this matter. The court should permit Respondent's own attorneys fees and costs to be deducted from his share of the marital home's equity as an appropriate use of his asset."[40]

ii. As of the date of Kirk's first mandated support payment (September 1, 2019), Kirk and Shawnee Marsh had paid $41,671 in attorneys fees, $14,000 in voluntary child support gifts, and over $5,000 in travel fees on behalf of Lauren and the children.

iii. Even *if* Russel had any confidence in the success of an appeal in the Utah courts, at the time of the 2019 judgment Kirk and Shawnee Marsh lacked resources for a lengthy and expensive appeal process. This has not changed, as they have been paying Russel's obligation to Lauren Zimmer of ~$1000/month, plus travel costs and attorney fees.

iv. As of May 7, 2024, Kirk and Shawnee Marsh have paid $87,012.50 in attorneys fees, more than $48,000 in child support, over $45,000 in travel fees on behalf of the children, and ~$5,000 in reunification therapy to Dana Emmons.

b. The Defendant's motion states "The fact that Marsh's parents have been supporting him and his family for several years suggests that they would be capable."

i. This assumption is undermined by the fact that Russel is representing himself pro-se, both in Utah State Court and Federal District Court.

[40] *Marsh v. Marsh,* Respondent's pre trial brief 08.05.2019

ii. Kirk Marsh, age 74, has been unable to afford retirement, and has taken additional employment (teaching) as a means to provide the support obligations.

c. Kirk and Shawnee Marsh, as per their brief, are willing to join this pro-se lawsuit, should the Court be persuaded by the Defendants' avocation on their behalf.

106. Defendants' cite *Frielich v. Upper Chesapeake Health,* which is a case of a medical licensing board dispute regarding a doctor's privileges. The federal court declined to involve itself. As this case was not a case of constitutional violations, Russel cannot find the relevance.

107. 42 USC § 1983 is appropriate when: "Appeal is not a viable course of action at all: nonparties, after all, have no right of appeal."[41]

108. The Fourth Amendment is specifically designed to protect people from government action such as in this case: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

109. Seizure of property occurred when Judge Edwards ordered monetary payment to a third party not of the contract without due process.

a. This was a particularly egregious ruling:

b. Judge Edwards knew Kirk had declined to accept the Court's request for Kirk to be

[41] Harvard Law Review - JUDICIAL IMMUNITY AT THE (SECOND) FOUNDING: A NEW PERSPECTIVE ON § 1983

mandated to make his voluntary gifts the basis for court-ordered child support.

110. That child support was demanded by the Petitioner - in violation of Utah statutes and Constitutional rights - and then granted, further raises questions of collusion and undue religious influence, resulting in punishment against Russel's parents, notwithstanding their independence in the divorce and in Russel's criminal activity. The fact that Russel's parents were helping the children and their mother long before the trial suggests that Lauren's financial needs were being met, and that ordering obligatory child support was punitive.

5.3 Defendants claim: Marsh fails to allege facts sufficient to establish a 1983 claim for violation of his Eighth Amendment rights.

111. Defendants state "Again, 18 U.S.C § 241 and 242 impose criminal, not civil, liability, and thus are inapplicable."

a. Russel appreciates Defendants' acknowledgment that Judge Edwards violated federal criminal statutes.

b. Russel reminds Defendants that Edwards' violations, taken in a judicial role, serve to deprive Russel of freedom, and Kirk and Shawnee Marsh of property, without the due process of law.

c. Defendants cite *United States v. Price,* in which the Supreme Court held that government officials could be held criminally liable under 18 U.S.C § 241 and 242; the Supreme Court found the victims had been denied due process under the terms of the Civil Rights Act of 1866 (precursor to 42 USC § 1983); *and* "The Court further stipulated that actions by any private citizen who participated with the state official also came under the scope of the act. To act under 'color of law' does not require

that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents."

i. Russel does not request that Edwards and Emmons be held criminally liable, as it is outside his jurisdiction to do so.

ii. Defendants suggest, through *US v. Price,* that Dana Emmons is very much a state actor and shares liability with UTAH and EDWARDS.

112. Defendants state "Marsh cannot hold the State of Utah vicariously liable because vicarious liability is inapplicable to 1983 suits." This is not true.

a. A supervisor can be held liable in his or her individual capacity under § 1983 only if (1) the supervisor personally participated in the constitutional violation, or (2) there is a "sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989)).

b. Moreover, for liability to attach, supervisors must have actual supervisory authority over the government actor who committed the alleged violations. *Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018.)

c. Additionally in this case, Judge Edwards was acting in his official capacity *on behalf of the state.*

i. Presumably the state will be the responsible actor in enforcing any support arrearages owed by Russel, as well as any judicial action for criminal charges. Therefore, the state must be included in this § 1983 action for Russel, as injunction and damages are necessary.

ii. Please see items pertaining to *Ex Parte Young Doctrine.*

113. Defendants also state, "Neither the state nor Judge Edwards in his official capacity are a "person" under 1983."

a. Please see previous arguments *Monell v. Department of Social Services*, as well as *Will v. Michigan Dep't of State Police.*

b. 'In order to establish liability under § 1983, the plaintiff must prove that she has been deprived of a federal statutory or constitutional right by someone acting "under color of" state law. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Russel has repeatedly established these claims.

114. Defendants state "Although Marsh mentions cruel and unusual punishment, cruel and unusual punishment generally entails 'the unnecessary and wanton infliction of pain through excessive physical force."

a. Defendants seem to confuse 'generally' and 'exclusively.'

b. Examples of cruel and unusual punishment are not limited to physical force but also include proportionality of sentence, prison beatings, conditions of confinement, overcrowding.[42] In *Solem v. Helm, 463 U.S. 277 (1983)*, the Supreme Court held that a sentence may not be disproportionate to the crime committed, regardless of whether the crime is a felony or a misdemeanor.

c. Given (b) above, we can conclude that illegally ordering support payments and punitive damages, that then subject Russel to false incarceration for a crime he was entrapped to commit, are cruel and unusual punishment.

115. The Defendants state: "It seems that the Excessive Fines Clause would be most applicable. The

[42] https://www.law.cornell.edu/wex/cruel_and_unusual_punishment

Supreme Court has 'explained that at the time the Constitution was adopted, 'the word fine' was understood to mean payment to a sovereign as punishment for some offense."

i. Defendants continue: 'The Eighth Amendment also protects against excessive civil fines, as noted in *Hudson v. United States*, 522 U.S. 93 (1997). In addition to monetary payments, the excessive fines clause applies to forfeitures of property, as held in *Austin v. United States*, 509 U.S. 602 (1993).'[43]

ii. This implies Defendants' acknowledgement that Judge Edwards imposed 'excessive civil fines' in a courtroom where he has no jurisdiction to impose civil fines at all, as 'a punishment for some offense,' which he had no jurisdiction to punish.

iii. The excessive fines clause applies to forfeitures of property, which would apply to any monies seized by the Court against Kirk and Shawnee Marsh.

iv. Additionally, as defense to the Excessive Fines Clause, Defendants argue that, as no payments were made to a sovereign, they are excused from the violation.

v. Defendants argue that monies paid to Dana Emmons do not constitute fines to a sovereign, as Emmons is not an employee of the State of Utah. Although not an employee, Emmons was functioning as a State Actor in the Marsh case.

vi. Defendants cite *Austin v. United States.* In *Austin*, assets were seized after a drug arrest. Austin argued that forfeiture of his property violated the Excessive Fines Clause, and was denied, as the government argued that the Excessive Fines Clause was inapplicable to in rem government civil forfeitures, and that forfeiture is a monetary punishment.

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[43] https://www.law.cornell.edu/wex/excessive_fines

1. Defendants improperly imply that Edwards' forfeiture of property, whether of Kirk or Russel Marsh, was a valid civil forfeiture;
2. Defendants' argue it was not a constitutional violation because, in Defendants' view, payment did not go to a sovereign.

vii. By their own arguments, Defendants are guilty of violating the Eighth Amendment against Russel, Kirk, and Shawnee Marsh, both by cruel and unusual punishment and violations of the Excessive Fines Clause

5.4 Defendants claim: In section four of Marsh's complaint, Marsh fails to allege any constitutional violation or any other viable basis for a claim

116. Defendants state "Marsh attempts to establish a claim for 'conspiracy against rights' against Judge Edwards and, vicariously, the State of Utah."

a. 42 U.S.C. §1985 - Conspiracy to interfere with civil rights, section 2, states:

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court in the United States from attending such court, or from testifying to any matter pending therein, freely, fully and truthfully, or to injure such party or witness in her person or property on account of his having so attended or testified, or to influence the verdict….. If two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any matter, the due course of justice in any state or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons to the equal protection of the laws.

b. In any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

117. As stated, there are clear violations of the Constitution and Federal law as well as Utah state law by Judge Edwards, which violate Russel's right to due process as protected by the Fourteenth Amendment.

a. 42 USC 1983 states: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

b. Conspiracy against rights is a constitutional violation, as are deprivation of freedom without due process, and are violations of privacy.

118. Defendants state, "18 USC 241 and 242 are, once again, inapplicable because they are criminal statutes and do not impose civil liability.

a. Russel appreciates Defendants' acknowledgment that Judge Edwards violated federal criminal statutes.

b. Russel reminds Defendants that Edwards' violations, taken in a judicial role, serve to deprive Russel of freedom, privacy and due process of law.

c. Please see earlier arguments concerning *United States v. Price.*

119. Defendants state: "§ 1983 is inapplicable because Marsh does not allege any violation of federal rights."

a. Russel repeatedly alleges violations of federal rights of due process under the Fourteenth Amendment.

b. Defendants failed to identify that Russel's rights to privacy were violated; also conspiracy was committed against him, violating his federal and constitutional rights.

c. Defendants cite *Golden State Transit Corp v. City of Los Angeles,* which states: "the Supremacy Clause, of its own force, does not create rights enforceable under § 1983. The Clause "is not a source of any federal rights"; rather, it " 'secure[s]' federal rights by according them priority whenever they come in conflict with state law."

i. Defendants argue that, as Russel did not explicitly state constitutional violations, that there is no basis for § 1983.

ii. However, when violations of state law result in violations of constitutional and federal rights, a 1983 is applicable. The Supremacy Clause secures Russel's federal rights, as Russel's rights are in conflict with Judge Edwards' illegal applications of Utah law.

120. The federal statutes cited in the initial complaint provide adequate basis for making the claims:

a. As noted in the original filing "Ms. Emmons violated Russel's privacy and trust by allowing Lauren to listen to, and be involved in, Russel's therapy session without his knowledge nor his consent."

b. When Russel reported the violation to the Court and requested Dana's removal, Judge Edwards ruled against further action in the matter and directed Russel to continue counseling in violation of his right to privacy.

c. "If a state participates at all in a conspiracy, it has violated the Fourteenth Amendment with regard to any individuals whose rights are infringed, based on the constitutional right to travel." *United States v. Guest*, 383 U.S. 745 (1966). Certainly if a right to travel is a violation, the right to privacy is also a violation.

d. Additionally, Russel was obstructed from obtaining the due course of justice, as Judge Edwards' threats to his freedom barred Russel from acting as a truthful witness in the court of law.

5.5 Marsh fails to state a claim for negligence

121. Defendants state "Marsh lists 18 U.S.C § 241 and 242, which are criminal statutes, do not impose civil liability, and thus are inapplicable."

a. Russel appreciates Defendants' acknowledgment that Judge Edwards violated federal criminal statutes.

b. Russel reminds Defendants that Edwards' negligent violations, taken in a judicial role, serve to deprive Russel of rights without the due process of law.

c. Please see aforementioned argument of *United States v. Price.*

122. Defendants state: "Marsh also points to 42 USC § 1983, which is also inapplicable because Marsh does not allege any violation of federal rights, but rather, points only to Utah state law."

a. By violating Utah state law, Judge Edwards also violated Russel's federal rights of due process under the Fourteenth Amendment.

b. Please see aforementioned argument regarding *Golden State Transit Corp v. City of Los Angeles*

c. Defendants acknowledge "Marsh does state that Judge Edwards was negligent in following Utah Code Ann. 30-3-5.2, so it is possible that he is attempting to assert a negligence claim."

i. Russel did assert a negligence claim.

ii. Negligence is a violation of Russel's right to due process under the Fourteenth Amendment.

123. Defendants state "The Utah state statute … permits a trial court to order an investigation regarding allegations of child abuse. It does not create a private right of action, and no private right of action for damages can be implied."

a. Defendants cite *Buckner v. Kennard,* which states " private statutory right of action exists when a private party can bring a lawsuit for "relief from injuries caused by another's violation of a federal statute."

b. Further, private rights of action are those that belong to the individual person or subgroup, as distinguished from those enforceable only on behalf of the general public. *Solar Salt Co. v. S. Pac. Transp. Co.*, 555 P.2d 286, 290-91 (Utah 1976)

c. In Utah, "[i]n the absence of language expressly granting a private right of action ... the courts of this state are reluctant to imply a private right of action based on state

law." Whether a particular statute provides a private right of action is a question of statutory interpretation. *Miller v. Weaver*, 2003 UT 12, ¶ 20, 66 P.3d 592

d. In *Miller*, The Utah Supreme Court ruled "considering the statute in its entirety, we reasoned that a method for remedying statutory violations already existed in the form of an appeal to the school board and/or the State Board of Education. We further held that it would be inconsistent with the legislature's statutory scheme to infer a private right of action for parents or students against a teacher from the statute. The purpose of the statute was to create a state commission to hear complaints against teachers and take disciplinary action; allowing plaintiffs a cause of action under the statute would "'override . . . a system which the Legislature has at least tacitly, if not expressly, sanctioned.'"

i. Thus, by the precedence cited by Defendants in *Buckner,* Russel has no private right of action because the private right of action would "override a system which the Legislator has sanctioned."

ii. However, in this case, Judge Edwards barred Russel from using the system sanctioned for the complaints of child abuse; Edwards' barring of Russel was complete in that Russel faced prison time for further attempts to use the state system.

iii. Thus, Edwards created a private right of action for Russel within this federal setting.

iv. This private right of action also implies a private right of action for damages.

124. In their motion to dismiss, Defendants state, "Marsh does state that Judge Edwards was negligent in following Utah Code Ann. 30-3-5.2, so it is possible that he is attempting to assert

a negligence claim.... Marsh does not specifically allege that Judge Edwards had a duty. Even assuming the Utah statute imposes a duty on Judge Edwards, Marsh has not plausibly alleged that there was a breach of that duty."

a. In his complaint, Marsh did allege that Judge Edwards had a duty by citing Utah Civil Code 30-3-5, which clearly states that Judge Edwards has a duty:

i. "When, in any divorce proceeding... an allegation of child abuse or child sexual abuse is made, implicating either party, the court, *after making an inquiry*, may order that an investigation be conducted."

ii. Defendants state "Pursuant to that statute, the court 'may' order an investigation." However, Defendants fail to acknowledge the preceding line of the code that says 'the court, *after making an inquiry"*

1. Utah Code Ann. 30-3-5.2 also says "that investigation shall be conducted within 30 days of the court's notice and request for an investigation."

a. Russel made an allegation of child abuse to Dana Emmons in January of 2021; on February 1, 2021, Russel reported the allegations to the Court.

b. The matter was not addressed by the Court in any capacity until April 1, 2021, at which point Edwards diminished the facts as well as Russel's concerns, and prohibited Russel from addressing them, either with his children or with the Court.

2. In their motion, Defendants state "ordering an investigation was within the judge's discretion, and he was not required to do so." Defendants fail to acknowledge that Judge Edwards was negligent on multiple levels:

i. Edwards failed in his duty to make a timely *inquiry* into the allegations.

ii. Edwards' eventual inquiry into the allegations on April 1, 2021 (60 days after the court's notice and request for an investigation) proved the allegations via Lauren's testimony of the events.

iii. The words of the statute, "may order that an investigation be conducted" strongly suggests that, after making an inquiry, the court *will* order an investigation when the inquiry verifies abuse.

iv. In spite of indisputed evidence, no investigation was ordered.

v. Additionally, the statute states "A final award of custody or parent-time may not be rendered until a report on that investigation is received by the court."

vi. Edwards was negligent in inaction, both for not completing a timely inquiry, in violation of the 30 days given in the statute, and was again negligent in failing to order an investigation and for inaction in protecting the children upon verifying child abuse.

vii. Further, Edwards sanctioned Russel, who was *not* the implicated party, with supervised parent-time, and awarded the other parent custody without an investigation.

b. Defendants allege " Marsh has not plausibly alleged that there was a breach of that duty." This is not true:

i. Lines 147 of the initial complaint reads "Russel's expressed concerns for the safety, both physical and emotional, of his children, were ignored, and the stress of being ordered to leave it alone was traumatic. As already discussed, *Russel*

was awarded supervised parent time for his concerns. No further investigation into the abuse was ordered, and was, in fact, prohibited."

ii. Lines 154-155 of the initial complaint reads "an impartial judge would have, at minimum, considered the allegations. Judge Edwards ruled that he never wanted either issue to come across his desk again."

125. Defendants cite Utah case *Kaneth v. Kaneth,* in which a divorcing father's allegations of child abuse were not investigated: in *Kaneth,* the court declined to investigate child abuse after already having conducted an evaluation of the accused by a licensed psychologist. As the evaluation showed no evidence of instability, harsh punishment of the children, nor abuse, the court declined to order an investigation

a. In Russel's case, the court conducted neither timely inquiry nor investigation before dismissing verified allegations of child abuse.

b. Although the judge has discretion, the two cases are not similar. In this case, a parent admitted the abuse occurred, yet the court did not order an investigation.

126. In the case of Edwards and Emmons, negligence would be a lesser offense when statutes regarding the safety of children are violated, which violations could subject Edwards, Emmons and Utah to being complicit in ongoing child abuse.

a. Negligence is the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. Either a person's actions or omissions of actions can be found negligent.

b. Defendants cite *Webb v. Univ of Utah,* which states that the omission of actions is considered negligent only when the person had a duty to act. Violating constitutional, federal or state law would not be actions a reasonable person would

intentionally make. Additionally, failure to act based on statutory duty would be more than just negligent.

127. As Defendants agree in their motion 'to establish a claim for negligence in Utah, a plaintiff must establish four elements:[44]

a. That the defendant owed the plaintiff a duty

i. Generally, members of society have entered a social contract that includes a duty to not cause harm to others. When considering legal duty as an element of negligence, there is a duty to act reasonably. Reasonable action is to obey the law.

ii. Utah Code Ann. 30-3-5.2 states that Edwards and Emmons had a legal duty to Russel and his children.

b. That the defendant had breached their duty

1. In this case, the burden on the Court to fulfill his duty was minimal. In his ruling, Edwards could have easily followed the law.

2. Edwards decision *not* to follow the law is further evidence of collusion.

c. That the breach of duty was the proximate cause of the plaintiff's injury

i. As stated in the initial complaint, Russel has experienced significant harm, both physical and mental as well as emotional, as he has worried for the safety of his children.

ii. Additionally, and more importantly, the children have experienced harm, both physical and emotional, from the negligent actions of the Defendants.

d. That the plaintiff in fact suffered injuries or damages

1. To satisfy proximate cause, the defendant's breach of the duty of care must

[44] As per the Defendant's motion, *Webb v. Univ of Utah*, 2005

be the actual cause of the harm to the plaintiff. One way to assess proximate cause is to evaluate the foreseeability of the defendant's actions resulting in harm.

2. Edwards, in ruling to ignore child abuse and force Russel back into the care of an abusive therapist, had to understand that this would be a harm to Russel.
3. It is appropriate to quote Judge Edwards: "the Court finds that (Russel's) opinion on the matter is somewhat reduced by virtue of the fact that he is where he is by the virtue of his own choice and his criminal actions."[45]
4. Plaintiff's conduct and intervening factors can also affect the analysis of proximate cause. If a plaintiff is engaging in conduct that increases the likelihood of harm, the defendant's conduct may not be ruled as the proximate cause of that harm.
5. *Russel* was not the abuser of the children, but was punished as such (supervised parent-time). Thus, we have the opposite: the only behavior Russel exhibited to increase the likelihood of harm was reporting the harm inflicted upon his children by others.

128. Judge Edwards' negligent actions regarding Dana Emmons empowered her to continue acting negligently, abusively, and in violation of law; Edwards did not supervise and, after learning of the abuses Russel suffered, imparted further judicial discretion to Dana regarding Russel's rights, thus engaging in collusion.

129. There is often a fifth element to prove a negligence claim: Defendant's actions are the

[45] *Marsh v. Marsh* transcription of ruling - hearing 5.14.19

cause-in-fact of harm to the plaintiff[46]

a. Cause-in-fact is often the easiest to prove. For this element, the jury needs to consider if the plaintiff's harm would not have occurred but for the defendant's conduct.

b. Certainly the negligence claims and accompanying harm outlined in the complaint could only be attributed to the Court's and Ms. Emmons actions. If Judge Edwards and Dana Emmons had acted in accordance with laws, there would be no basis for these portions of this lawsuit.

5.5.1 Even if Marsh did state a claim for negligence, the claim is barred.

130. The state references the Utah Governmental Immunity Act (GIA) law as basis for barring claims. "The Utah Governmental Immunity Act (GIA) "governs all claims against governmental entities or against their employees arising out of the performance of the employee's duties, within the scope of employment, or under color of authority," and provides all governmental entities and employees with immunity from suit for any injury resulting from the exercise of a governmental function unless immunity is waived." Utah Code Ann. §§ 63G-7-101(2)(b) and -201(1).

131. The State's own three part test is as follows:

a. The first step is to decide whether the activity involved is a 'governmental function.'

i. Defendants agree: 'Judge Edwards' decisions in presiding over the divorce proceedings fall within the GIA's broad definition of governmental function.'

[46] https://www.law.cornell.edu/wex/negligence

ii. Defendants disagree, however, Russel reasserts and clarifies: Dana Emmons was a state actor with power and authority to act on the State's behalf, and her actions in this case were a governmental function.

b. The second step is to determine whether a different section of the GIA waives immunity.

i. As per Defendants' motion, "The GIA waives immunity 'as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment."

ii. Defendant's agree: 'Therefore, the second part would be satisfied if, as Marsh alleges, Judge Edwards acted negligently.'

iii. Russel asserts that Dana Emmons' negligence would also satisfy the second part.

c. The third step is to decide whether there is an exception to the waiver that acts to preserve immunity;

i. The State cites Utah Code Ann. § 63G-7-201(4)(a), (b), (c), (e) as non waiver of immunity. "A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:

ii. (a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

iii. (b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional

trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

iv. (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

v. (e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

132. The State claims that Russel's complaint fails the third portion of this three-prong test, therefore the Governmental Immunity Act grants Judge Edwards immunity.

133. In the case cited by the Defendants, *Wagner v. State of Utah*, state actors were negligent in their supervisory duties of a mentally incompetent man, Mr. Giese, who while under the care and supervision of state actors, attacked and injured a woman, Wagner, in K-Mart.

a. Wagner sued the State for negligence in their supervision of Giese. The State argued that Giese's action was battery, which constitutes an exception to the waiver that acts to preserve the State's immunity.

b. Wagner argued that Giese's action could not constitute battery, as a battery charge involves intent, and Giese was mentally incompetent.

c. The Court determined that Giese was guilty of battery, and therefore the State was not liable.

d. The Utah Supreme Court ruled "We hold that the actor need not intend that his contact be harmful or offensive in order to commit a battery so long as he deliberately made the contact and so long as that contact satisfies our legal test for what is harmful or offensive."

e. In *Wagner*, the state and employees claimed immunity because the assault was not a result of negligence on behalf of the state nor state actors; the assault was the result of Geise's criminal actions (regardless of intent), therefore the state should be immune and Geise personally liable.

134. By the argument presented by Defendants, the state retains immunity for Judge Edwards' actions if Judge Edwards' actions hurt, injured or punished Russel, even if it was not malicious, so long as Edwards' actions satisfy the legal test for what is harmful or offensive (i.e. cruel and unusual).

135. By claiming this immunity under GIA waivers, the State is admitting that Judge Edwards acted outside of his employment and judicial responsibilities, and as such, the State is immune from his actions.

136. Therefore, by Utah's own argument, because Judge Edwards' actions were cruel, unusual and outside the scope of his employment, Utah should be immune, Edwards' judicial immunity should be waived and Edwards should be held as a private person for sovereign immunity purposes as per *Ex Parte Young Doctrine:*

a. 'an individual can be a state actor for 14th amendment purposes (which only prohibits unconstitutional acts by the state, and those who represent it) while remaining a private person for sovereign immunity purposes.'

b. As per (a) above, although Utah *may* be able to claim Eleventh Amendment immunity on behalf of the *State,* Utah is still liable for damages caused by state actors (i.e. Michael Edwards and Dana Emmons)

137. IF Defendants claim that The State of Utah is immune under the Eleventh Amendment AND Judge Edwards is immune under the Utah Governmental Immunity Act, then the Utah

Governmental Immunity Act is unconstitutional, as it provides immunity to state actor defendants who violate constitutional rights.

a. Under this scenario, Russel contests the unconstitutional statutes within Utah law, which provides yet another basis for a federal 42 USC § 1983 filing.

138. Defendants state "Even if the Court has jurisdiction over Judge Edwards and Marsh's claims, and even if Judge Edwards was not entitled to common-law judicial immunity, Judge Edwards would be entitled to state-law immunity from the only possible claim, under the Governmental Immunity Act."

a. In a very baffling conclusion to section 5.5.1 of the Defendants motion, Defendants claim that the Utah State Law trumps Federal Constitutional Law

b. The Supremacy Clause of the Constitution means that the Constitution overrides all the laws of the states, invalidating any contrary laws. Therefore, when a state official attempts to enforce an unconstitutional law, that individual is stripped of his official character. He becomes merely another citizen who can constitutionally be brought before the court by a party seeking injunctive relief.

5.6 Defendants claim: Marsh's claim for supervisory liability fails because there could not have been an underlying constitutional violation because Ms. Emmons is not a state actor

139. Defendants *again* address supervisory liability, see previous arguments.

140. Defendants *again* address conspiracy, see previous arguments.

141. Defendants *again* state "18 USC § 241 and § 242 are criminal statutes and do not impose civil liability; they are thus inapplicable." Please see previous arguments

142. Defendants *again* claim that neither the judge nor the state are a person, see previous arguments.

143. Defendants claim "Dana Emmons is not a state actor and thus could not have violated Marsh's due process rights."

144. Conspiracy against rights is a constitutional violation, as are deprivation of freedom without due process, and illegal search and seizure. "Constitutional requirements of due process apply to garnishment and prejudgment attachment procedures whenever state officers act jointly with a private creditor in securing the property in dispute. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349. And if the challenged conduct of the creditor constitutes state action as delimited by this Court's prior decisions, then that conduct is also action under color of state law and will support a suit under § 1983." [47]

145. According to the Supreme Court in *Edmonson v. Leesville* Concrete Co., Inc., 500 U.S. 614 (1991), "Although the conduct of private parties lies beyond the Constitution's scope in most instances, governmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government and, as a result, be subject to constitutional constraints."

a. Though the term *state actor* would seem to include only persons who are directly employed by the state, the United States Supreme Court has interpreted these amendments and laws passed pursuant to them to cover many persons who have

[47] *Giles M. LUGAR, Petitioner, v. EDMONDSON OIL COMPANY, INC. and Ronald L. Barbour* 457 U.S. 922 https://www.law.cornell.edu/supremecourt/text/457/922

only an indirect relationship with the government.

b. Under the state action doctrine, a private entity like Amazon may be regarded as a state actor if its actions are entangled with a state actor, or if it is carrying out a public function traditionally reserved for the states.[48] *Marsh v. Alabama*, 326 U.S. 501 (1946) states: Merely opening up a business to the public is not state action, but the performance of a "public function" (a function that has been traditionally and exclusively performed by the state) is state action;

   i. Put into context, merely counseling a father and daughters after lengthy separation is not a state action, but the performance of the "public function" of counseling with a father and daughters, with judicial authority over the amount and manner of parent-time, is a state action.

   ii. Absolute authority over both the time and circumstances of a parent's time with their child is a function normally reserved for the office of a judge, but in this case, the authority was given to a private actor, turning the private actor into a state actor.

c. The Supreme Court has held private citizens to be liable for state action when they conspire with government officials to deprive people of their rights.[49] Defendants cite *United States v. Price,* which states "The Court further stipulated that actions by any private citizen who participated with the state official also came under the scope of the act. To act under 'color of law' does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents." "

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[48] ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 542 (5th ed. 2015)

[49]

d. If the government merely enters into a contract with an individual or organization for the goods or services, the actions of the private party are not state action, but if the government and the private party enter into a "joint enterprise" or a "symbiotic relationship" with each other it is state action. (*Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961))

i. Joint enterprise in the context of business law is an informal relationship between two or more parties in which each party contributes skills, knowledge, resources or money to achieve a common purpose.[50]

ii. Joint enterprise in the context of criminal law and torts refers to a criminal conspiracy or an instance of group negligence. In a joint enterprise each party may be held liable for the wrongdoings of the other participants and the doctrine of joint enterprise is essential to establish a shared liability of parties.[51]

iii. By giving Dana Emmons a portion of his judicial power, Judge Edwards and Dana entered into a 'joint enterprise' - care of Russel Marsh and his children, making Dana Emmons a state actor.

iv. Judge Edwards and Dana Emmons furthered the joint enterprise by engaging in group negligence in the case of Russel Marsh and children, thereby establishing a shared liability in this lawsuit.

146. Defendants state "It is well established that being under court appointment does not transform a non-state actor into a state actor."

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50 https://www.law.cornell.edu/wex/joint_enterprise#:~:text=Joint%20enterprise%20in%20the%20context,a%20single%20event%20or%20transaction.

51 https://www.law.cornell.edu/wex/joint_enterprise#:~:text=Joint%20enterprise%20in%20the%20context,a%20single%20event%20or%20transaction.

a. Defendants state examples of 'holding a court-appointed physician and court-appointed attorney were not state actors and that a § 1983 action must be dismissed against them.'

   i. In the Defendants' cited case, *Hall v. Quillen,* it was ruled 'circuit courts, with complete unanimity, have .... declared that there is a lack of state action in such a situation, and, consequently, no liability under § 1983.'

   ii. In *Hall v. Quillen,* the judge did not impart judicial authority to the attorney and to the physician: both were asked to perform their respective functions under court appointment.

b. In this case, Judge Edwards gave Dana Emmons judicial authority (thus making her a state actor) over Russel's time with his children, rights as a parent, as well as Russel's own freedom, when he ordered:

   i. "The counselor is to provide assistance and direction to the parties as to whether or not a break in parent time schedule is needed, and, if so, what the schedule should be."[52]

   ii. "The Court's order today is that, Mr. Marsh, you are to reengage with Ms. Emmons, and you are to take advantage of her services. You're to listen to what she recommends, and you're to do what it takes to see this process through."[53]

   iii. "But what I don't want is any statements to the children that are negative or derogatory about the other side or alienating in any way. I don't want anything that's interrogating about wrong things or bad things that are happening at the other house. If those kinds of things need to be brought up, they are to be

[52] *Marsh v. Marsh* Divorce decree 8.16.2019
[53] *Marsh v. Marsh* Hearing orders 4.1.2020

brought up with the assistance of a reunification therapist.... Make sure that this order of the Court is honored."[54]

iv. "But that's going to mean working together and – with the children and with the reunification therapist to ensure that the reunification therapist can feel, at some point, whenever that is - I don't know if it's before or after summer parent time, if it's next year, if it's the year after, I don't know when it is."[55]

v. "I'm turning to the professionalism of this reunification therapist to let the Court and the parties know when she feels that it is done."[56]

147. Defendants quote *Lugar v. Edmonson Oil Co.:* "To implicate § 1983, conduct must be *fairly attributable to the State*." Defendants sought to cherry-pick the full quote, in an effort to mislead the Court: "Conduct allegedly causing the deprivation of a constitutional right protected against infringement by a State must be fairly attributable to the State. In determining the question of fair attribution,

a. the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by it or by a person for whom it is responsible, and

b. the party charged with the deprivation must be a person who may fairly be said to be a state actor, either because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."[57]

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[54] *Marsh v. Marsh* Hearing orders 04.01.2020
[55] *Marsh v. Marsh* Hearing orders 04.01.2020
[56] *Marsh v. Marsh* Hearing orders 04.01.2020
[57] *Giles M. LUGAR, Petitioner, v. EDMONDSON OIL COMPANY, INC. and Ronald L. Barbour* 457 U.S. 922 https://www.law.cornell.edu/supremecourt/text/457/922

i. In this case Edwards imparted judicial authority upon Dana Emmons over Russel's constitutional, federal and state rights, giving the counselor significant judicial, unsupervised power

ii. Judge Edwards and Dana Emmons then, in tandem, violated Russel's constitutional, federal and state rights.

iii. The Defendants may as well have cited *Star Wars:* "These are not the droids you're looking for…"

iv. In United States constitutional law, state action is an action by Dana Emmons, who acted on behalf of Judge Edwards, and therefore subject to limitations imposed on government by the United States Constitution, including the First, Fifth, and Fourteenth Amendments, which prohibit the federal and state governments from violating certain rights and freedoms.

CONCLUSION

For the above stated reasons, Russel requests that the Court grant his motions and dismiss Defendants' motion to dismiss the case with prejudice.

FILED
2024 MAY 13 A 10:43

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

KIRK RUSSEL MARSH, Plaintiff, vs. THE STATE OF UTAH; JUDGE MICHAEL EDWARDS; DANA EMMONS, Defendant	Case No.: 1:24-CV-516 JUDGE PATRICIA TOLLIVER GILES MAGISTRATE JUDGE IVAN D. DAVIS

FACTUAL DISPUTES TO DEFENDANTS MOTION TO DISMISS

1. Russel agrees with facts 1, 3, 4, 6 ,7, 9, 10, 11 as set out by the Defendants.

2. Russel objects to fact 2, which reads "At the time of the events at issue, Dana Emmons was the court-appointed reunification counselor upon which the parties agreed."

   a. This is misleading in two ways:

The first being the implication that the parties agreed to reunification counseling. This is not true. The Court ordered reunification upon Lauren's request, in spite of the Court's acknowledgement that the children's anxiety about spending time with Russel stemmed from their mother's anxiety, not from the children's own feelings.

Additionally, as the parties did initially agree to the appointment of Dana Emmons, Russel did *not* agree (due to the violations of his privacy rights, as well as those of his children) to her appointment after the first meeting with Dana and the children.

b. The fact is in dispute because the parties *did not* agree with reunification services nor with the continued use of Dana Emmons, and Russel was coerced into using Dana's services, much to his continued abuse.

3. Russel objects to fact 5, which reads:

"Judge Edwards, having found that Marsh had dissipated ***at least half*** of the marital funds in the course of his illegal activities, awarded all the marital equity to Marsh's wife."

4. The Defendants footnoted this information, sourcing item 99 of the initial complaint, which quotes Edwards' ruling as:

"The Court would normally divide the $120,000 in equity remaining in the property between the parties. However, where the Court has found that respondent dissipated at least $60,000 of marital funds in the course of his illegal activities, the Court finds that it is equitable to award the entire $120,000 in marital equity to the petitioner."

5. Defendants stated *as fact* to the Court that $60,000 is half of $180,000. This misrepresentation of facts appears to be meant to mislead this Court into underestimating the egregious nature of Edwards' divorce judgment.

6. It should be noted that, after the divorce trial in 2019, Russel objected to the ruling concerning awarding of marital assets: on November 4, 2019, Russel submitted an *Objection to Proposed Final Documents* to the Court, stating:

a. 'Conclusion paragraph 24 evidences a mistake in calculations by the Court. The Court found that Respondent depleted marital assets of $60,000. He also found that the $120,000 remaining equity in the home was a marital asset. That should result in $90,000 for each party ($180,000 in marital assets divided in half). Instead the Court awarded the Respondent the $60,000 he depleted and Petitioner $120,000. Perhaps the Court would be willing to clarify its intent regarding these issues.'

b. Judge Edwards dismissed the objection, and awarded Lauren (Petitioner) the entirety of the marital assets.

7. These events set a precedent that, due to his criminal actions, Russel would not be given fair and impartial treatment in the Utah Family Court system.

8. As Judge Edwards gave Lauren all assets, and then ordered Russel support payment obligations far above his ability to earn, the Defendants' misleading statement of fact to this Court is another example of Defendants' continued abuse of Russel and manipulation of the legal system.

9. Russel objects to fact 8, which reads "In or around December 2019, the parties chose Dana Emmons as their reunification counselor. Marsh and his children first met with Emmons on or about December 10, 2019." This should be 2020, not 2019.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 12th of May, 2024.[11]

Dated this 12th of May, 2024.

Kirk Russel Marsh

Kirk Russel Marsh, Pro Se